

BAIL SLIP

The Appellant/Sole Accused Ganesan @ Ganesh Adithyan aged 46 years, S/o.Late Jaya Nadar was directed to be released on bail as per Order of this Court dated 20.07.2016 in CrI.M.P.No4707 of 2016 in CrI.A.No.296 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 23.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.296 of 2016

Ganesan @ Ganesh Adithyan ... Appellant/Sole Accused

Vs.

The State, by
The Inspector of Police,
Gobichettipalayam Police Station,
Erode District.
(Crime No.625 of 2014) ... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 26.02.2016 passed by the learned Sessions Judge, Mahila Court, (Mahila Fast Track Court) Erode District, in S.C.No.103 of 2015.

For Appellant : Mr.D.R.Arunkumar

For Respondent : Mr.V.M.R.Rajendran,
Additional Public Prosecutor

JUDGMENT

(Judgement of the Court was delivered by V.Bharathidasan, J.)

The appellant in this appeal is the sole accused in Sessions Case No.103 of 2015, on the file of the learned Sessions Judge, Mahila Court, (Mahila Fast Track Court), Erode District. He stood charged for offence punishable under Sections 506(ii) and 307 IPC IPC. The Trial Court, after trial, by judgement dated 26.02.2016, convicted the appellants/accused under Section 506(ii) IPC and sentenced him to undergo rigorous imprisonment for seven years and also imposed a fine of Rs.2,000/-, in default, to undergo simple imprisonment for one year and convicted him under Section 307 IPC and sentenced him to undergo life imprisonment and no amount was imposed. The sentences shall ordered to run

concurrently. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows:

(i) P.W.1 is the victim in this case. The accused is the brother of the victim/P.W.1. There was a dispute between the accused and the victim with regard to the partition of ancestral property and they are not talking each other. On 01.12.2014 at about 11.30 a.m., the accused called the victim over telephone and threatened her to sign the partition deed in absence he will murder her. Subsequently, on the same day at about 5.30 p.m., the accused came to the house of victim/P.W.1 and quarrelled with her and during the quarrel, he attacked the victim with knife and caused injuries. P.W.2, the husband of P.W.1, and P.W.3, who is working as Cutting Master in the company situated in the compound, where P.W.1 was resided, and on hearing the noise of P.W.1, P.Ws.2 and P.W.3 rushed the scene of occurrence and took P.W.1 to the Government Hospital, Gobichettiplayam.

(ii) P.W.6, Doctor, working in the Government Hospital, Gobichettiplayam, has given first aid treatment to the victim and found the following injuries:-

- (1) Lacerated wound 7 x 1 x 0.2 cm depth cannot be arrived in front of neck.
- (2) Lacerated wound left thumb, ring, middle finger.

She issued Accident Register[Ex.P2]. Then, P.W.6 referred the victim to the Government Medical College and Hospital, Coimbatore. Then, P.W.2 took P.W.1 to the Abi S.K.Hospital, Gobichettipalayam.

(iii) P.W.9, Doctor, working in the Abi S.K. Hospital, Gobichettipalayam, admitted the victim in the hospital and found the following injuries.

(i) Cut wound and severe bleeding 5cm long, 1cm breadth, 1 cm deep in anterior aspect of left side of neck and active bleeding.

(ii) 3 cm long zigzag skin deep lacerated wound in anterior aspect of right side of neck and active bleeding.

(iii) 2.5 cm long x 1\2 cm in deep incised wound in left cheek with active bleeding.

(iv) 1.5 cm long x 1\2 cm in deep incised wound left pre auricular region with active bleeding.

(v) 3 cm long x 1 cm deep slizing wound in left thumb finger palmar aspect with active bleeding.

(vi) 2 cm long x 0.5 cm deep slizing wound in left middle finger palmar aspect and active bleeding.

(vii) 2 cm longx1 cm in deep slizing wound in left ring finger palmar aspect and flexor tendon injury.

He issued Accident Register Ex.P8.

(iv) P.W.7, Sub Inspector of Police, attached to the respondent police station, on 01.12.2014 at about 7.45 p.m., on receipt of the intimation from the Government Hospital, Gobichettipalayam, reached the Abi S.K.Hospital, Gobichettipalayam and obtained statement from P.W.1 and based on the said statement, P.W.7 registered a case in Crime No.625 of 2014 under Section 307 IPC and prepared first information report [Ex.P3] and sent the same to the learned Judicial Magistrate No.I, Gobichettipalayam and copies of the same to the higher officials.

(v) P.W.8, Inspector of Police attached to the respondent police station, on receipt of the first information report, commenced the investigation, proceeded to the scene of occurrence and prepared an observation mahazar[Ex.P4], drew rough sketch [Ex.P5] and examined some witnesses and recorded their statements. On 02.12.2014 at about 8.30 p.m., P.W.8 arrested the accused and on such arrest, the accused voluntarily given confession and based on the disclosure statement[Ex.P6], P.W.8 seized a knife[M.O.1] under mahazar [Ex.P7]. Then, he sent the accused for judicial custody. P.W.8 examined the Doctors, who have given treatment to the victim, and other witnesses and recorded their statements. After completion of investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed above and the appellant/accused denied the same as false. In order to prove the case of prosecution, as many as 9 witnesses were examined and 9 documents exhibited and 1 material object was marked.

4. Out of the said witnesses examined, P.W.1 is the injured victim. According to her, the accused is her brother, there was a dispute between the accused and P.W.1 with regard to the partition of their ancestral property. P.W.1 and the accused were not speaking together. She further deposed that on 01.12.2014 at about 11.30 a.m., the accused called her over telephone and threatened her to sign the partition deed, other wise he will kill her. Then, she informed the same to her husband. Subsequently, on the same day at about 5.30 p.m., the accused came to her house and talking her casually, at that time, suddenly, the accused took the knife from his pant pocket and attacked her indiscriminately and when she raised alarm, her husband and neighbour rushed the scene of occurrence and after seeing them, the accused ran away from the scene of occurrence. Then, P.Ws.2 and 3 took her to the Government Hospital, Gobichettipalayam, where, P.W.6, Doctor, gave first aid treatment and then she was taken to Abi S.K.

Hospital, Gobichettipalayam, where, the respondent police obtained statement from her. P.W.2 is the husband of P.W.1. According to him, P.W.1 informed him about the telephone conversation by the accused to P.W.1 and he saw the accused came to his house and talking with P.W.1. Subsequently, on hearing the noise of P.W.1, when he rushed the scene of occurrence, the accused ran away. P.W.3 is a person working as Cutting Master in side the compound, where P.W.1 was resided. After hearing the noise of P.W.1, he rushed the scene of occurrence and took the P.W.1 to the Government Hospital, Gobichettipalayam. P.W.4 is the Auto Driver. He is the witness to the observation mahazar. P.W.5 is the witness to the arrest and confession statement of the accused and also recovery of knife[M.O.1]. P.W.6, Doctor, working in the Government Hospital, Gobichettiplayam has stated that she has given first aid treatment to P.W.1 and also issued accident register[Ex.P2]. P.W.7, Sub Inspector of Police attached to the respondent police station has stated that he obtained statement from P.W.1 in the Hospital and based on the statement, he registered a case and prepared first information report and sent the same to the Judicial Magistrate Court and copies of the same to the higher officials. P.W.8, Inspector of Police, attached to the respondent police, on receipt of the first information report, commenced the investigation, examined the witnesses and recorded their statements, arrested the accused and seized the material objects and after completion of investigation, he laid charge sheet against the accused. P.W.9, Doctor, working in the Abi S.K. Hospital, Gobichettipalayam, where, he treated P.W.1 and issued Accident Register [Ex.P8].

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused did not examine any witness and no document was marked on his side.

6. Having considered all the above materials, the Trial Court convicted and sentenced the appellant/accused for the offence as stated in first paragraph of this judgment. Challenging the above conviction and sentence, the accused/appellants is before this Court.

7. We have heard Mr.D.R.Arunkumar, learned counsel appearing for the appellant and Mr.V.M.R.Rajendran, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. The accused is the brother of P.W.1/injured witness. There was a dispute between the family members with regard to the partition for ancestral property. According to P.W.1, the accused requested her to sign a partition deed, when she demanded more share of her mother's property, the accused refused the same and threatened her. Thereafter, on the date of occurrence at about 5.30 p.m., the accused went to the

house of P.W.1 and talking with her casually and suddenly, he took the knife and attacked her. P.W.2 is the husband of P.W.1. According to him, he was also in the scene of occurrence and he saw both the accused and P.W.1 talking together and thereafter, hearing the noise of P.W.1, he rushed there, the accused ran away from the scene of occurrence. Then, P.Ws.2 and 3 took her to the Government Hospital, Gobichettipalayam. P.W.6, Doctor, working in the Government Hospital, Gobichettipalayam, examined the victim/P.W.1 and issued Accident Register [Ex.P2], wherein, P.W.1 stated that she was attacked by one known person at about 5.30 p.m., and then she was taken to Abi S.K.Hospital, Gobichettipalayam, where, P.W.9, Doctor, admitted her in the Hospital and issued Accident Register, wherein also P.W.1 stated that she was attacked by known person, namely, the accused, with knife. From the above evidence, the prosecution has clearly established that it is only this accused attacked the P.W.1 with knife and caused injuries.

9. Now, we have to consider whether the act of the accused will fall within the ambit of Section 307 IPC. Even according to P.W.1, the accused came to her house at about 5.30 p.m., and he was talking with her casually and suddenly he attacked P.W.1 with knife and caused injuries. Then, she was taken to the Government Hospital, Gobichettipalayam, where, P.W.6, Doctor, examined P.W.1 and found two injuries. Subsequently, she was taken to the private hospital, namely, Abi S.K. Hospital, Gobichettipalayam, where, the Doctor found as many as seven injuries. P.W.9-Doctor, who has given treatment to P.W.1 at Abi S.K. Hospital, Gobichettipalayam. According to him, P.W.1 was admitted in the hospital and she was inpatient for four days and all the injuries sustained by her only simple injuries.

10. In order to bring home an offence under Section 307 IPC, the prosecution proved the following essential ingredients:

- i) that the death of a human being was attempted;
- ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and
- iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as; (a) the accused knew to be likely to cause death; or (b) as sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing

such death or injury.

11. But, none of the above ingredients is present in the instant case. Hence, the appellant cannot be convicted under Section 307 IPC. But the prosecution has clearly established that it is this accused has attacked P.W.1 with knife and caused injuries. Hence, the accused is liable to be punished under Section 324 IPC only.

12. So far as the quantum of punishment is concerned, it is reported that the accused has been in jail for more than 7 months and taking into consideration of the facts and circumstances of the case, we are of the considered view that sentencing the appellant to the period of sentence already undergone by him with a fine of Rs.50,000/- would meet the ends of justice. We further thought it fit to order for compensation to P.W.1 under Section 357 Cr.P.C.

13. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant in S.C.No.103 of 2015 dated 26.02.2016 on the file of the learned Sessions Judge, Mahila Court, (Mahila Fast Track Court) Erode, for offences under Sections 307 and 506(ii) IPC are set aside and instead, he is convicted only under Section 324 of IPC and sentenced to the period already undergone and to pay a fine of Rs.50,000/- in default to undergo rigorous imprisonment for six months. The fine amount so collected shall be paid to P.W.1 as compensation under Section 357 of Cr.P.C.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

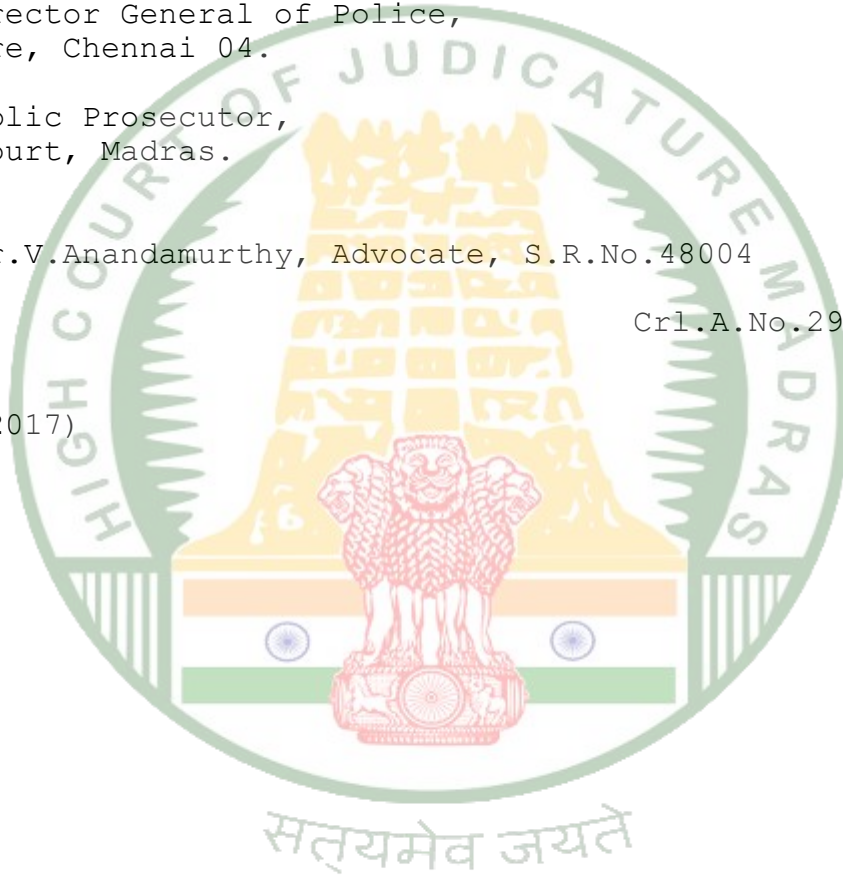
1. The Judicial Magistrate No.I,
Gobichettipalayam.
2. The Chief Judicial Magistrate,
Erode.
3. The Sessions Judge,
Mahila Court, (Mahila Fast Track Court)
Erode.
4. The Inspector of Police,
Gobichettipalayam Police Station,
Erode District.

5. The Superintendent,
Central Prison,
Coimbatore.
6. The Inspector of Police,
Cantonment Police Station,
Tiruchirapalli.
7. The Collector,
Coimbatore.
8. The Director General of Police,
Mylapore, Chennai 04.
9. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Anandamurthy, Advocate, S.R.No.48004

CrI.A.No.296 of 2016

RP(CO)
CA(22/02/2017)



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